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## COLLIER et al. v. SEWARD &amp; ROPER et al.

June 11, 1914.

[82 S. E. 100.]

**1. Wills (§ 687\*)—Creation of Trust—Rights of Beneficiaries—Creditors.**—Testatrix bequeathed certain land to a trustee to pay the income of one half to her daughter M. for life, and the income of the other half to her daughter E. for life; the share of each on her death, leaving children surviving, to go to them and, in case of the death of either without children surviving, the remainder to pass to the survivor. E. died without issue, after which M. died leaving a will by which she directed that her estate should be divided equally between her eight children and C., who was insolvent and against whom complainants had recovered judgment. Held, that the devise by the trustee of all his property to his widow, the beneficiary M., and her devise of all her estate to her children, including C., did not extinguish the trustee's indebtedness to the trust fund, and that C.'s interest therein was subject to the rights of his creditors.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1638-1643; Dec. Dig. § 687.\* 13 Va.-W. Va. Enc. Dig. 842.]

**2. Bankruptcy (§ 268\*)—Sale by Trustee—Rights of Purchaser.**—Where, pending suit to subject an interest of a trust fund to the rights of judgment creditors, defendants, who were parties to the suit and had full knowledge of its object, purchased the interest of the trustee in bankruptcy in the judgment debtor's interest in the trust estate, such purchase was subject and not superior to the rights of such creditors.

[Ed. Note.—For other cases, see Bankruptcy, Cent. Dig. §§ 372-379; Dec. Dig. § 268.\* 2 Va.-W. Va. Enc. Dig. 242.]

Appeal from Hustings Court of Petersburg.

Suit by Seward & Roper and others against one Collier and others. Judgment for complainants, and defendants appeal. Affirmed.

*Buford, Lewis & Peterson*, of Lawrenceville, for appellants.  
*Wm. B. McIlwaine* and *Jos. B. Prince*, both of Petersburg, for appellees *Roper* and *Davis*.

## HAMMOND v. RIDLEY'S EX'RS et al.

June 11, 1914.

[82 S. E. 102.]

**1. Mortgages (§ 38\*)—Deed as Mortgage—Evidence.**—Evidence

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

held to require a finding that complainant was the owner of an undivided moiety of the land in controversy; complainant's deed to defendant's decedent being given only as security.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 108-111; Dec. Dig. § 38.\* 10 Va.-W. Va. Enc. Dig. 26.]

**2. Trusts (§ 21\*)—Declaration—Certainty.**—Testator, after receiving a deed to complainant's interest in a farm which they had previously owned together, executed an instrument reciting that he held the legal title to the Bluff Point farm in Westmoreland county, Va., and that complainant was entitled to an undivided half interest in the farm, subject to payment to testator of an existing indebtedness of \$265.36, with interest, and such further indebtedness as might arise in the management of the farm and be owing at the time of final settlement. Held, that such declaration of trust was not defective for want of definiteness, and was therefore valid and enforceable.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 29, 30; Dec. Dig. § 21.\* 13 Va.-W. Va. Enc. Dig. 269.]

**3. Mortgages (§ 25\*)—Validity—Consideration.**—Where complainant conveyed to testator his interest in a farm, which they owned together, to secure the payment of an indebtedness which he owed to testator, with authority to retain the debt out of any funds that might at any time come into his hands, before payment of the debt, arising from complainant's equitable interest in the farm, the trust thereby created was not voluntary.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 29-42; 1364; Dec. Dig. § 25.\* 10 Va.-W. Va. Enc. Dig. 17.]

**4. Trusts (§ 365\*)—Enforcement—Laches.**—Where a trust of complainant's interest in a farm was declared in writing in 1900, and its existence in favor of complainant was repeatedly admitted by testator between 1904 and 1908, when he died, a suit to enforce the trust, brought in 1911, was not barred by laches.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 568-573; Dec. Dig. § 365.\* 13 Va.-W. Va. Enc. Dig. 368.]

**5. Fraudulent Conveyances (§ 52\*)—Assignment for Creditors—Reconveyance.**—Complainant, owning a half interest in a farm, valued at \$2,000, filed a declaration of homestead, and then made an assignment for the benefit of creditors, reserving all his exemptions, including such interest. Complainant thereafter conveyed his interest to testator, his co-owner, to secure certain indebtedness, and, after having discharged such indebtedness, procured from the trustees a deed releasing his interest in the farm from the incumbrance of the general deed of assignment. Held, that neither complainant's deed to his co-owner or the deed of the trustees releasing the land was fraudulent.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 118-127; Dec. Dig. § 52.\* 1 Va.-W. Va. Enc. Dig. 825.]

**6. Assignments for Benefit of Creditors (§ 184\*)—Effect—Rights of Grantor.**—A conveyance for the benefit of creditors does not divest the grantor of all interest in the property, but his beneficial interest continues, subject to be applied to the satisfaction of the debts secured; the grantor being authorized to incumber such interest by mortgage.

[Ed. Note.—For other cases, see *Assignments for Benefit of Creditors*, Cent. Dig. §§ 555-571; Dec. Dig. § 184.\* 1 Va.-W. Va. Enc. Dig. 829.]

**7. Assignments for Benefit of Creditors (§ 188\*)—Release of Property by Trustees—Right to Object.**—Where a debtor conveyed certain real property, which he claimed exemp<sup>t</sup> as his homestead, to trustees for the benefit of creditors, a subsequent release of the property to the debtor by the trustees could only be attacked as a breach of trust by creditors.

[Ed. Note.—For other cases, see *Assignments for Benefit of Creditors*, Cent. Dig. §§ 577-584; Dec. Dig. § 188.\* 1 Va.-W. Va. Enc. Dig. 829.]

Appeal from Circuit Court, Westmoreland County.

Suit by John B. Hammond against Cuthbert W. Ridley's executors and devisees. Judgment for defendants, and complainant appeals. Reversed.

*Moore, Barbour, Keith & McCandlish*, of Fairfax, and *Geo. Mason*, of Colonial Beach, for appellant.

*J. O. Hefflin*, of Colonial Beach, and *J. W. Chinn, Jr.*, of Warsaw, for appellees.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.